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No. 16

In the Supreme Court of the United States

OCTOBER TERM, 1961

WILLIAM J. ROPER, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Virginia (R. 6–17) is reported at 170 F. Supp. 763. The opinions in the United States Court of Appeals for the Fourth Circuit (R. 97–108) are reported at 282 F. 2d 413.

JURISDICTION

The judgment of the court of appeals was entered on August 30, 1960 (R. 109). The petition for a writ of certiorari was filed on November 25, 1960, and granted on January 23, 1961 (R. 110; 365 U.S. 802). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a shipowner warrants the seaworthiness of a deactivated, admittedly unseaworthy vessel of the moth-ball fleet which is out of navigation and is being used for the non-maritime purpose of storing wheat.

2. Whether a shipowner's warranty of "seaworthiness" extends to a shore structure in the form of a shoreside crane or "marine leg" which forms no part of any ship's equipment but is a permanent and integral part of a pier and grain elevator attached to the real estate.

STATEMENT

Petitioner brought this libel *in personam,* pursuant to the Suits in Admiralty Act, against the United States as owner of the deactivated liberty ship, SS HARRY LANE (R. 2–4). The libel sought damages for injuries sustained by petitioner while aboard the HARRY LANE removing storage grain from that vessel to a grain elevator, and was based upon the allegations that the injuries were due to the "unseaworthiness" of a "marine leg" and the negligence of employees of the United States (R. 3).

The basic facts, found by the district court and upheld on appeal by the court of appeals, may be summarized as follows:

After the cessation of hostilities in World War II (in December 1945), the SS HARRY LANE became a member of the deactivated "moth-ball" fleet located on the James River, near Norfolk, Virginia (R. 8). The deactivation included the complete stripping from the vessel and storage ashore of the vessel's

supplies, stores, nautical instruments, cargo gear and tackle, the drainage of all pipes and machinery, and the securing of the rudder, tail shaft, and propeller to prevent turning (R. 8, 57–58). The deactivated vessel was not certified or licensed to operate as a vessel in navigation (R. 8).

With the large surpluses of grain in this country in 1954, storage facilities were scarce. The Commodity Credit Corporation entered into a general warehousing agreement with the Continental Grain Company, for the handling of grain, including the storage of grain aboard deactivated vessels of the "moth-ball" fleet (R. 8–9). In June 1954, the SS HARRY LANE was loaded with storage grain under that agreement, and then returned to its place with the other vessels of the "moth-ball" fleet (R. 8–9). She was not moved again until over two years later, when in September 1956, she was brought back to the same grain elevator for the purpose of discharging the storage grain (R. 9, 89). While serving in the place of a grain warehouse she was considered "a storage bin, that's all" (R. 42).

For the movement to the grain elevator, the United States employed a custodial agent, American Foreign Steamship Agency, which in turn hired a gang consisting of a "riding master" and six men to handle lines. The line handlers did not sign on as seamen for the vessel, and the equipment aboard her consisted of mooring lines, heaving lines, fire extinguishers and hose, all of which were intended to be used for the purpose of this movement only (R. 6–7, 10, 101–102). The ship was towed by tugs, and the

"riding master" was subject to the orders of the captain aboard the tugboat had no license as a ship's officer and who was in control of her movement (R. 42, 102). When the vessel arrived at the grain piers, the riding gang was dismissed, but the "riding master", as a watchman, remained to see that the ship was properly moored and kept clear and free of fire hazards (R. 10, 102). The elevation of the storage grain from the ship to the elevator was under the exclusive control of the Continental Grain Co., and the "riding master" had nothing to do with the operation (R. 7, 16, 46).*

On these facts, both courts below found that the SS HARRY LANE had been withdrawn from service as a ship in 1945, and had never been returned. The HARRY LANE had not been used to transport grain but only to store it in the stead of a grain elevator. She was not in navigation at the time of petitioner's injury (R. 12–17; 101–103).

The "marine leg," a particular type of shoreside crane, was an integral part of the grain elevator permanently attached to the pier and leased and maintained by Continental Grain Co. It consisted of a large metal housing containing motors and a conveyer belt with scoops. One end of the shoreside crane or "leg" may be lowered into the hold of the vessel, where its scoops dip into the grain, carry it up the housing of the "leg" and dump it on to another belt at the pier end of the housing, which

*In its original answer to the libel, the United States admitted the allegation that the vessel was "being sailed as a cargo carrier" (R. 2, 5), but this was amended at the trial, on motion of the government, to withdraw the admission. See the Appendix, *infra*, pp. 36–37.

then conveys the grain (through a series of belts and chutes) into the storage bins of the elevator (R. 7, 99).

The "marine leg" was equipped with four plows or "grain shovels" powered by the leg, which were used to bring grain from remote corners of a hold to the scoops (R. 7). The marine leg was raised and lowered by an operator on shore at the top of the leg in a control booth, but was incapable of lateral movement (R. 7, 99). When the grain was removed from each hold of the vessel, she was warped back and forth along the pier to align another hatch and hold with the position of the shoreside crane or "leg" (R. 49). Continental Grain Co. owned and maintained the "marine leg," and employed its operator (R. 7). The "riding master" of the ship had no right or authority to inspect the "marine leg" or its appurtenances (R. 48). The operation of a "marine leg" required the service of an expert stevedore trained in the use of such equipment (R. 16). The "marine leg" was uniquely shore attached equipment, and could not form any part of the equipment of vessels which go to sea (R. 10).

Under its contract with the United States, Continental Grain Company agreed to remove the grain stored aboard the SS HARRY LANE and place it in its grain elevators. In turn, Continental Grain had an agreement with Atlantic and Gulf Grain Stevedoring Associates for necessary stevedoring services (R. 7).

On October 2, 1956, petitioner was the foreman of the gang of Atlantic and Gulf stevedores using the

"marine leg" to elevate the storage grain from the SS HARRY LANE to the grain elevator. After the grain had been unloaded to the point where it no longer flowed to the leg, the longshoremen were utilizing the grain shovels or "plows" of the leg for the purpose of bringing the remainder of the grain to the mouth of the leg. Petitioner was demonstrating the proper method of utilizing the plow of the "marine leg" to one of the longshoremen, when a block, a part of the shoreside crane or marine leg, broke and struck petitioner and injured him. The cause of the injury was a latent defect in this block attached on the corner of the "marine leg" (R. 7–8).

Although the basis for his suit was this defect in the shoreside crane or "marine leg," petitioner brought this libel for negligence and "unseaworthiness" against the United States, instead of suing Continental Grain Company, which owned and operated the leg (R. 2–4). In its answer, the United States generally denied the allegations of negligence and unseaworthiness and specifically denied that the shoreside crane or "marine leg" (as a part of the pier and grain elevator) was any part of the ship's equipment (R. 4–5; see also fn. *, *supra*, p. 4). The United States impleaded Continental Grain, which in turn impleaded Atlantic and Gulf (R. 98).

The District Court found that the United States was not negligent, and that, in view of the HARRY LANE's removal from navigation, the use of the dead vessel for storage rather than as a cargo carrier, the nature of petitioner's duties, the absence of the shipowner's control, and the nature of the shoreside

crane or "marine leg" involved, the warranty of "seaworthiness" could not apply[1] (R. 16). Accordingly, a final decree was entered in favor of the United States, and the impleading petitions of the United States against Continental Grain and of Continental Grain against Atlantic and Gulf were dismissed without prejudice (R. 17–18).

The Court of Appeals for the Fourth Circuit affirmed in each respect[2] (R. 97–103). Chief Judge Sobeloff dissented on the ground that the HARRY LANE was in navigation at the time of the injury, and the warranty of "seaworthiness" applies to all equipment used in unloading a vessel, even though it forms part of a shore structure and thus is equipment which does not and cannot go to sea (R. 103–108, particularly 106, 107–108).

SUMMARY OF ARGUMENT

The courts below properly declined to permit recovery by petitioner on the ground of the vessel's breach of an alleged warranty of seaworthiness.

A. Fully cognizant of the extension of the warranty of seaworthiness to shore-based workers in *Seas Shipping Co.* v. *Sieracki,* 328 U.S. 85, and subsequent decisions of this Court, the courts below were equally

[1] Since the District Court held that there was no warranty of seaworthiness because of all the circumstances, it found it unnecessary to decide whether a warranty could ever extend to equipment forming part of a pier, wharf or dock, such as the "marine leg", which is "equipment not found aboard ship during navigation" (R. 10).

[2] Similarly, the Court of Appeals did not reach the question of whether the warranty of a vessel in navigation extended to part of a shore structure (R. 101).

cognizant of the fact that those decisions dealt only with vessels in navigation and represented by the shipowners as warranted seaworthy for a voyage. The owner does not warrant the seaworthiness of deactivated vessels which have been withdrawn from navigation and are no longer in active maritime service. *West* v. *United States,* 361 U.S. 118. Nor can there be reliance on such a warranty where the vessel is patently unseaworthy. There are neither historical nor other considerations justifying the extension of the shipowner's burden of absolute liability from vessels warranted ready for the sea to those which are not represented or warranted to be seaworthy, but are known to be unseaworthy and withdrawn from navigation.

Petitioner was injured aboard the HARRY LANE, a deactivated vessel of the "moth ball" fleet which had been withdrawn from navigation and active maritime service, and was being used, not for the transportation of cargo, but only for the storage of grain, in lieu of a warehouse. Whether a vessel is in navigation or has been withdrawn from active maritime service is a question of fact. *Butler* v. *Whiteman,* 356 U.S. 271. Both courts below correctly found that the HARRY LANE was not in navigation, and there is no occasion in this case for departure from this Court's practice of accepting the concurrent factual findings of two lower courts.

B. There is no warranty of the "seaworthiness" of the parts of a shore structure, such as the "marine leg" here, which does not and cannot go to sea as a part of a vessel's equipment. The Court's decisions in *Alaska Steamship Co.* v. *Petterson,* 347 U.S. 396, and *Rogers* v. *United States Lines,* 347 U.S. 984, held

only that the warranty of seaworthiness applies to all equipment which is like ship's equipment and used in conjunction with ship's equipment in the place of basic ship's gear which the shipowner has failed to provide.

By contrast, the "marine leg" is part of a shore structure which cannot go to sea because it is permanently attached to the pier, and is wholly unlike any equipment used by vessels in navigation. In holding that a shore-based worker using specialized shore equipment is not performing work traditionally done by seamen, this Court, in *United Pilots Association* v. *Halecki,* 358 U.S. 613, strongly implied that the warranty of seaworthiness does not apply to such specialized shore equipment. Each court of appeals which has been confronted with the problem has, in accord with *Halecki,* denied recovery based upon claims of unseaworthiness of equipment which is not traditionally or commonly carried aboard a vessel as ship's equipment, and is not used as ship's equipment in place of gear traditionally furnished by the shipowner. *Berryhill* v. *Pacific Far East Line,* 238 F. 2d 385 (C.A. 9), certiorari denied, 354 U.S. 938; *Fredericks* v. *American Export Lines,* 227 F. 2d 450 (C.A. 2); *McKnight* v. *N. M. Paterson & Sons,* 286 F. 2d 250 (C.A. 6), pending on petition for certiorari, No. 67, this Term.

There is no justification for extending the warranty of seaworthiness to shore-based equipment which is not the kind of equipment carried by a seagoing vessel—particularly to such shore-based equipment which is part of the real estate. The operation of the "marine leg", permanently attached to the

grain elevator, was work done only by stevedores, and never by seamen, and the hazards arising out of that operation did not originate with the ship or her equipment, but were due solely to defects in the granary's equipment. It would be anomalous to extend the warranty of the seaworthiness of a vessel and her equipment to such shore machinery, which is unlike ship's equipment and never did, or could, go to sea as part of the equipment of a vessel for a voyage.

Such an extension of the shipowner's warranty would make his liability dependent upon the chance of having his vessel unloaded at the particular time the shore equipment happened to break down.

There is no practical need for such an extension, because the longshoreman has adequate remedies under existing law which give him compensation for such injuries without regard to fault, as well as the traditional compensation for the *negligence* of the owner of the shore-based equipment.

ARGUMENT

THE COURTS BELOW PROPERLY DETERMINED THAT THE UNITED STATES DID NOT WARRANT THE "SEAWORTHINESS" OF A SHORE STRUCTURE SUCH AS A "MARINE LEG" USED IN UNLOADING GRAIN FROM A DEACTIVATED VESSEL REMOVED FROM NAVIGATION AND MARITIME SERVICE

A. THERE WAS NO WARRANTY OF "SEAWORTHINESS" OF THE HARRY LANE, WHICH WAS A DEACTIVATED AND UNSEAWORTHY VESSEL REMOVED FROM NAVIGATION AND MARITIME SERVICE

1. *This Court's decisions recognize a warranty of seaworthiness only as to vessels represented to be seaworthy for a voyage.*—In *Seas Shipping Co.* v. *Sie-*

racki, 328 U.S. 85, the Court extended the protection afforded by the shipowner's absolute warranty of a ship as seaworthy and properly equipped for a voyage from seamen to include longshoremen and other shore-based workmen employed by independent contractors when engaged in the performance of work incident to a ship's voyage. The rationale of this extension beyond shippers, passengers, and seamen, who are in privity of contract with the shipowner, is that such shore-workers, while not in privity of contract, are equally within the owner's representation of his vessel as seaworthy for the voyage. Further, the Court held that the stevedoring work of loading and unloading involved was an integral part of the voyage and was "Historically the work * * * of the ship's service, performed until recent times by members of the crew" (328 U.S. at 96).[3] Hence the Court concluded that the shipowner could not (by parcelling out, to intermediary employers, services incident to navigation which were traditionally performed by seamen) escape the consequences of his representation of the vessel as seaworthy for the voyage. "For these purposes he [the longshoreman] is, in short, a seaman because he is doing a seaman's work and incurring a seaman's hazards" (328 U.S. at 99). Thus, he was entitled

[3] This factual premise has been disputed. Tetrault, *Seamen, Seaworthiness and the Rights of Harbor Workers*, 39 Cornell L. Q. 381, 412–418 (1954). Since this Court has recently had occasion to re-examine the historical evolution of the doctrine of unseaworthiness in *Mitchell* v. *Trawler Racer, Inc.*, 362 U.S. 539, we need not discuss the "dubious ancestry" (*United Pilots Association* v. *Halecki*, 358 U.S. 613, 616) of that doctrine.

to rely upon the shipowner's representation that the ship was seaworthy and safe.

Similarly, in each of the subsequent cases in which the Court has held that a warranty of seaworthiness had been made, relied on, and breached, the vessel was in navigation in active maritime service. Thus, in *Pope & Talbot, Inc.* v. *Hawn,* 346 U.S. 406, a shore-based carpenter was allowed to recover for breach of the shipowner's representation when he received an injury while repairing a slight defect in the vessel's loading equipment so that the loading of the vessel for the voyage could continue. Similarly, *Alaska Steamship Co.* v. *Petterson,* 347 U.S. 396, involved an injury incurred while loading for a voyage, while *Rogers* v. *United States,* 347 U.S. 984, and *Crumady* v. *The Joachim Hendrik Fisser,* 358 U.S. 423, involved injuries incurred in unloading after a voyage. See, also, *The Tungas* v. *Skovgaard,* 358 U.S. 588, which concerned an injury in the course of repairing machinery during unloading from a voyage. As summarized by this Court recently, the preceding cases, in which the shipowner was held to have made and breached a warranty of seaworthiness, are all cases in which the vessels "* * * were in active maritime service in the course of loading or unloading cargo pursuant to voyages" (*West* v. *United States,* 361 U.S. 118, 121).[4]

By contrast, vessels which have been deactivated and withdrawn from the active maritime service of

[4] The cases in which the warranty of seaworthiness has been applied to members of a crew also involve vessels in active service, and injuries incident to a voyage. See, *e.g.*, *Mahnich* v. *Southern S.S. Co.*, 321 U.S. 96; *Mitchell* v. *Trawler Racer, Inc.*, 362 U.S. 539; *Michalic* v. *Cleveland Tankers*, 364 U.S. 325.

navigation, and do not have crew, operable ship's equipment, or a license to navigate, are not represented and warranted by their owners to be worthy and safe to go to sea but, on the contrary, are plainly represented to be unseaworthy. Consequently, there is no express or implied warranty by their owners that such vessels may be relied on as being seaworthy. *West* v. *United States,* 361 U.S. 118.[5]

2. *There is no justification for extending the doctrine of Seas Shipping Co.* v. *Sieracki,* 328 U.S. 85, *to cover work performed on a deactivated vessel known to be unseaworthy and out of navigation, and never represented as being seaworthy for a voyage.*— This Court and other federal courts have consistently recognized the distinction between a seaman who works on a vessel in navigation on a voyage (and which is thus represented and warranted to be seaworthy for that purpose), and one who works on a vessel which has been removed from active maritime service.[6] The fact that a vessel has been removed from active navigation bears closely upon whether one who works aboard her can be considered a "sea-

[5] In *United Pilots Association* v. *Halecki,* 358 U.S. 613, the Court refused to extend the warranty to a shore-based repairman who was fatally injured while cleaning a vessel's generators with carbon tetrachloride. The Court denied recovery on the ground that the shore-based worker was not doing work traditionally done by seamen, and therefore considered it unnecessary to decide whether there was any warranty of seaworthiness in the circumstances. 358 U.S. at 617.

[6] There is no meaningful distinction between the terms "in navigation" and "in active maritime service" and we use them interchangeably in this brief.

man" within the meaning and coverage of the Jones Act.

Thus, in *Desper* v. *Starved Rock Ferry*, 342 U.S. 187, this Court ruled that a man who had been employed during the summer months as a seaman on a fleet of motorboats carrying sightseers, who was reemployed during the following spring to help prepare the vessels for navigation, and who was injured in the course of such seasonal repair work, was not a "seaman" of a vessel within the purview of the Jones Act. "The distinct nature of the [seasonal repair] work is emphasized by the fact that there was no vessel engaged in navigation at the time of the decedent's death." *Id.* at 191.

Similarly, in *Butler* v. *Whiteman*, 356 U.S. 271, the Court ruled that whether the vessel was in navigation was an element of the plaintiff's case which should be decided by the jury in determining whether he was a seaman and member of a crew so as to be entitled to recovery under the Jones Act. See, also, *Antus* v. *Interocean S.S. Co.*, 108 F. 2d 185 (C.A. 6); *Hawn* v. *American S.S. Co.*, 107 F. 2d 999 (C.A. 2); *Seneca Washed Gravel Corporation* v. *McManigal*, 65 F. 2d 779 (C.A. 2).

Since a deactivated vessel, which is out of navigation and active maritime service, is not only not warranted seaworthy for a voyage, but has no "seamen", the *Sieracki* doctrine, which was designed to give the shore-based worker the protection to which a seaman on a voyage is entitled "* * * because he is doing a seaman's work" (328 U.S. at 99), can have no application. Since a seaman's work is in aid of or incident

to navigation on a voyage, there is no seaman's work on a vessel which has been removed from navigation and deactivated. One who has a seaman's papers and has been to sea is not a seaman if he is employed at the time on a vessel out of navigation. Neither can a shore-based worker employed on such a vessel be deemed a seaman, to whom the shipowner makes the representation or warranty made to those whose vessels go to sea.

Accordingly, this Court and the lower courts have refused to find that there is any warranty of seaworthiness in respect of vessels which have been deactivated and removed from navigation, and are obviously not fit for sea. *West* v. *United States,* 361 U.S. 118; *Raidy* v. *United States,* 153 F. Supp. 777 (D. Md.), affirmed on opinion below, 252 F. 2d 117 (C.A. 4), certiorari denied, 356 U.S. 973; *Union Carbide Corp.* v. *Goett,* 256 F. 2d 449 (C.A. 4), vacated and remanded, 361 U.S. 340, on remand, 278 F. 2d 319 (adhering to original result), certiorari denied, 364 U.S. 826; *Latus* v. *United States,* 277 F. 2d 264 (C.A. 2), certiorari denied, 364 U.S. 827; *Noel* v. *Isbrandtsen,* 287 F. 2d 783 (C.A. 4), certiorari denied, 366 U.S. 975. These cases involved deactivated and unseaworthy vessels which were in the process of being made seaworthy for a future voyage, and, in *Noel,* a previously active vessel which was being deactivated and rendered unseaworthy.[7]

[7] Petitioner relies upon *Lawlor* v. *Socony Vacuum Oil Co., Inc.,* 275 F. 2d 599 (C.A. 2), certiorari denied, 363 U.S. 844, for the proposition "that *West* [*West* v. *United States, supra*] will be limited to its special facts" (Pet. Brief, p. 14). *Lawlor* merely holds that a vessel which was undergoing annual repairs,

3. ***The finding of the courts below that the HARRY LANE was not in navigation was correct, and should not be disturbed.***—Petitioner recognizes, as he must, that "the focus should be upon the status of the ship * * *" (*West* v. *United States,* 361 U.S. 118, 122) in determining whether there was any representation or warranty that the HARRY LANE was seaworthy (Pet. Brief, pp. 10–12). He contends, however, that, contrary to the findings, the vessel was in navigation and was in active maritime service (Pet. Brief, pp. 12–14). Similarly, the dissenting opinion in the court of appeals was grounded upon the vessel's "status as a vessel in navigation" (R. 106; see also 104). In short, the petitioner and the dissenting judge below appear to agree that a deactivated vessel which is not in navigation is not represented by her owner to be seaworthy, and that there thus can be no reliance on a warranty of the seaworthiness of such a vessel. The only disagreement on this point is whether in fact the HARRY LANE was in navigation at the time of petitioner's injury.

(*a*). It is now settled that this question of whether a vessel is in or out of navigation is a question of fact to be resolved by the finder of fact upon consideration of all of the relevant circumstances. *Butler* v. *Whiteman,* 356 U.S. 271. The district court so understood, and found as a fact that the

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consisting primarily of painting and finding and caulking leaks, and which maintained her full crew in control over the vessel, appeared to be in navigation with her owner representing and warranting her seaworthiness. The Second Circuit in *Lawlor* made no attempt to limit *West*, but merely applied the principles laid down in *West* to the facts before it.

HARRY LANE was not in navigation at the time of petitioner's injury (R. 13). That factual finding was, of course, affirmed by the court of appeals (R. 102–103).

This Court does not normally review the concurrent findings of fact by two courts below. *Graver Tank & Mfg. Co., Inc.* v. *Linde Air Products Co.*, 336 U.S. 271, 275; see also *Great Atlantic & Pacific Tea Co.* v. *Supermarket Equipment Corp.*, 340 U.S. 147; *The Germanic*, 196 U.S. 589. Petitioner's argument that the HARRY LANE was in navigation and that the United States therefore warranted her as seaworthy (even though it was known that she was not) ignores the critical point that the issue here is factual, and has been resolved by the concurrent findings of the courts below (Pet. Brief, pp. 13–18).

That there has been no "very obvious and exceptional showing of error" (*Graver Tank & Mfg. Co.* v. *Linde Air Products Co., supra*, 336 U.S. at 275) warranting a review of those concurrent findings is, we believe, apparent. The HARRY LANE had been totally deactivated and taken out of service in 1945. She was unfit and incapable of going to sea, and there were no plans to make her ready or fit for active maritime service. She was not used to transport cargo after 1945. She had no crew and no license to navigate. Her only service after 1945 was non-maritime, as a "storage bin" for the storage of grain. She was moved twice in the eleven years. In 1954 she was towed from her mooring down stream to the grain elevator, where she was filled with storage

grain, and then towed back up stream to her mooring. In 1956 she was again towed from her mooring to the grain elevator, where the storage grain was removed, at the identical point it had been placed in her, and then was towed back to her mooring. She was, as anyone could see, a deactivated vessel, unfit for the sea or for maritime service. "It would be an unfair contradiction to say that the owner held the vessel out as seaworthy in such a case." *West* v. *United States,* 361 U.S. 118, 122.

The fact that she had been, prior to petitioner's injury, towed from one point to another, while in an obviously unseaworthy state, certainly did not require a finding that she was in maritime employment or navigation. The deactivated vessel in *West* v. *United States,* 361 U.S. 118, had been towed a much greater distance (from the James River mooring to Philadelphia) and yet "* * * as anyone could see, was not in maritime service." 361 U.S. at 122.

(*b*). The only two lower court cases involving the same issue are in accord with the concurrent findings of the lower courts here. *Hawn* v. *American S.S. Co.,* 107 F. 2d 999 (C.A. 2); *Kissinger* v. *United States,* 176 F. Supp. 828 (E.D.N.Y.). In *Hawn* the owner of a vessel, which had not been in service all summer, decided to use her for the storage of soya beans over the winter. Plaintiff, who was hired by the day to handle her lines, was injured during the process of loading her with the beans, while he was assisting in warping her back and forth along the wharf, so that the grain chutes could reach the hatches. The Second Circuit, by a panel consisting of Judges Clark, Learned Hand, and Augustus N.

Hand, affirmed the determination that the vessel could not be considered in navigation because it was being used to store, rather than to transport, the beans. It therefore concluded that the vessel had no crew, and that plaintiff was not a member of a crew entitled to recovery under the Jones Act, but was only entitled to compensation under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901, *et seq.*).

Petitioner, and the dissenting judge below, attempt to distinguish *Hawn* on the ground that it was decided before the decision of this Court in *Sieracki*[8] and therefore is no longer valid (Pet. Brief, p. 15; R. 105).[9] But, as the district court noted (R. 12), *Hawn* was cited with approval and relied upon by this Court in *Desper* v. *Starved Rock Ferry*, 342 U.S. 187, 191, a post-*Sieracki* decision. *Hawn* is therefore persuasive authority for the proposition that deactivated vessels used for the storage, rather than the transport, of goods are not in active maritime service, and are not in navigation.[10] More important, per-

[8] 328 U.S. 85.

[9] Petitioner also attempts to distinguish *Hawn* on the ground that the storage beans had not yet been placed aboard the vessel (Pet. Brief, p. 15). But if a vessel is not in active maritime service while she is in the process of being filled with a commodity for storage there is no reason to consider her in active service when the commodity in storage is in the course of being removed. Moreover, the attempted distinction is factually inaccurate, because the opinion makes it clear that the injury occurred "[i]n filling" the vessel, after she had been loading at the dock for several days. 107 F. 2d at 1000.

[10] Whether the finder of fact would be *permitted* to find that such a vessel was in navigation is not an issue in this case since both courts below have found the contrary.

haps, is the fact that the decisions in *Hawn* and *Kissinger* demonstrate that fair-minded fact-finders can reasonably conclude, as did the courts below, that the HARRY LANE was not in fact in navigation or in maritime service at the time of the petitioner's injury.

(*c*). Petitioner, and the dissenting judge below, base their argument that the vessel was in navigation upon an analogy to barges, contending, in effect, that the HARRY LANE was in active use as a barge, although concededly an inactive and obviously unseaworthy ship (Pet. Brief, p. 17; R. 105–106). While it is possible that a "hulk" or deactivated former ship, which is in regular employment for the transport of commodities, might be considered to be like a barge on a voyage and therefore warranted by her owner as seaworthy for such a voyage, that is not the situation in this case.[11]

The HARRY LANE was used only for the storage of grain and not to transport it (R. 8–9, 98). Ships which are in navigation are used to transport goods

[11] Moreover, as the court of appeals pointed out, if the owner of a deactivated vessel used as a barge were to warrant any of its equipment, it could in fairness only be required to warrant the equipment normally carried by a barge and not unloading equipment attached to a dock or pier which is not traditionally carried by barges (R. 102–103). Accord: *Union Carbide Corp.* v. *Goett*, 256 F. 2d 449 (C.A. 4), vacated and remanded, 361 U.S. 340; on remand, 278 F. 2d 319, certiorari denied, 364 U.S. 826 (where a barge which is unmanned during its normal operations was held seaworthy despite the absence of life preservers on the grounds, *inter alia*, that such equipment is unnecessary in its usual service.)

or passengers, or to assist in their carriage. By contrast to this normal maritime employment, the HARRY LANE was used as "a storage bin," in the place of a grain elevator or warehouse. Her use for storage was solely due to the shortage of grain storage facilities on shore. Except for the fact that she floats, her service as a storage bin was no more maritime than that of any grain warehouse. Similarly, petitioner's work in removing the grain was no more seaman's work than is the removal of grain from any other storage bin.

The position of petitioner and the dissenting judge below does not take account of these significant facts and erroneously refers to removal of the storage grain as the transportation of cargo (Pet. Brief, pp. 12, 13, 18; R. 104).[12]

Since the HARRY LANE was used solely as a warehouse for the storage of grain, and not to transport it, we believe that the two courts below were correct in their finding that she was not in active maritime service and not in navigation. At any rate, there was no "very obvious and exceptional showing of error" warranting departure from this Court's normal practice of accepting the concurrent factual findings of two lower courts.

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[12] The dissenting judge would have "* * * the actual conditions at the time of the accident control, not the past or future" (R. 104). Yet he asserts that the vessel had a "crew" while en route (R. 106). It is conceded that the six line handlers were employed by the day, were not boarded on the vessel, and were discharged before the accident (R. 10).

B. THERE IS NO WARRANTY OF "SEAWORTHINESS" AS TO A PART OF A SHORE STRUCTURE, SUCH AS THE "MARINE LEG" HERE, WHICH DOES NOT AND CANNOT GO TO SEA AS PART OF A VESSEL'S EQUIPMENT

The courts below also held that the United States as shipowner did not warrant the "seaworthiness" of the shoreside crane or "marine leg" which caused petitioner's injury (R. 16, 102–103). In so holding the district court relied upon "* * * the nature of the duties being performed by libellant, the type of equipment in use, the owner's lack of control over discharge operations, the vessel's removal from navigation, and the limited use of the ship for storage purposes * * *" (R. 16). Similarly, the court of appeals relied upon all the factual circumstances of this case in holding that there was no warranty of the seaworthiness of the "marine leg" (R. 101–103).

We have shown in Point A, *supra,* that the courts below were correct in their holding because there can be no warranty of seaworthiness as to vessels which, like the HARRY LANE, have been withdrawn from navigation and active maritime service and are known to be unseaworthy. That reason alone is enough for affirmance of the judgment below. We show in this Point that there is an independent reason requiring affirmance, namely, that there can be no representation or warranty of "seaworthiness" in respect of a part of a shore structure such as a shoreside crane or "marine leg," which was permanently attached to and a part of a grain elevator and its pier or

wharf, and was real estate which never was or could be a part of any ship's equipment."[13]

1. *No decisions of this Court have ever held that the shipowner warrants the "seaworthiness" of a part of a shore structure which does not and could not go to sea as part of a ship's equipment.*—Petitioner suggests that the *Petterson* and *Rogers* decisions of this Court[14] foreclose the question of whether the shipowner represents and warrants the "seaworthiness" of a part of a shore structure, such as the shoreside crane or "marine leg" here involved, which could never be a part of a ship's equipment and which could never go to sea (Pet. Brief, pp. 18–21; cf. R. 107–108). Analysis of these decisions, however, reveals that this question was not presented, discussed, or determined in those cases. On the contrary, there has been a strong implication by the Court that there is no warranty of seaworthiness in respect of such equipment.

(*a*). In *Alaska Steamship Co.* v. *Petterson*, 347 U.S. 396, this Court affirmed, *per curiam*, and without

[13] Neither court below found it necessary to determine whether the fact that the equipment causing the injury here was a shore structure and part of the equipment of a granary, rather than the ship's equipment, was in itself sufficient ground for holding that there could be no warranty of its "seaworthiness" (R. 9–10, 101). As petitioner and the dissenting judge below recognized, however, in order to reach the conclusion that the United States did warrant the "seaworthiness" of the shoreside crane or "marine leg," it is necessary to find both that the United States warranted the seaworthiness of the HARRY LANE and that the warranty extended to part of a shore structure such as the "marine leg" (Pet. Brief, pp. 18–21; R. 107–108).

[14] *Alaska Steamship Co.* v. *Petterson*, 347 U.S. 396; *Rogers* v. *United States Lines*, 347 U.S. 984.

opinion, a decision of the Ninth Circuit holding the shipowner's warranty of seaworthiness applicable to a ship's block although it had been brought aboard ship by the stevedoring company, because it was "* * * the type of equipment commonly found as part of the gear of both ships and stevedoring firms," 205 F. 2d 478, 479.[15]

Similarly, in *Rogers* v. *United States Lines,* 347 U.S. 984, the Court reversed, *per curiam,* without opinion, and upon the petition for certiorari, a decision of the Third Circuit holding the warranty of seaworthiness did not include a wire (called a "land fall runner") although it was attached to and winding upon a ship's winch, 205 F. 2d 57. The fact that the wire was the kind of equipment normally provided by the shipowner aboard a ship as a part of ship's equipment was highlighted by the parallel use of the ship's own wire (runner) on the second of the ship's winches. *Ibid.* Petitioner's argument in *Rogers,* which this Court apparently accepted, was that the ship in that case had accepted and adopted the wire as an appurtenance, because the owner had failed to have available all of the basic ship's cargo gear which was necessary to her operation.[16]

[15] The stevedoring firm in that case had the usual option to use the contractor's gear or the gear of the ship. See 347 U.S. 396 (dissenting opinion).

[16] See Petition for a Writ of Certiorari, No. 471, October Term 1953, Second Reason for Granting the Writ, particularly pp. 22 and 23:

"* * * the presence of the wire runner was the ship's responsibility because under the maritime law the shipowner's obligation of seaworthiness is to *supply* as well as to keep in order

The Third Circuit's decision in *Rogers* was based upon the shipowner's lack of control over the unloading operation (and thus over the runner), while the Ninth Circuit's opinion in *Petterson* was devoted to the proposition that lack of control did not preclude the representation and warranty of the seaworthiness of everything used as ship's equipment. Certiorari was premised on the conflict between circuits as to whether lack of control precluded application of the shipowner's warranty of the seaworthiness of all ship's equipment.[17] This Court's decisions in *Rogers* and *Petterson* held merely that the warranty of seaworthiness applies to all equipment which is used as ship's equipment, is commonly carried aboard as ship's equipment, and is in substitution of the ship's equipment—although it may be owned by the stevedore, and the stevedore may be in control of its use in unloading. The Court held in effect that the shipowner cannot avoid his representation and warranty that he has furnished seaworthy ship's equipment by having an independent contractor furnish such equipment, just as he cannot avoid that obligation by having the contractor furnish the workmen for what is traditionally the work of seamen.[18]

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the appliances appurtenant to the ship" (*Id.* at p. 23—emphasis as in original).

[17] See 347 U.S. 396 (dissenting opinion), and *Lopez* v. *American-Hawaiian S.S. Co.*, 201 F. 2d 418 (C.A. 3).

[18] The Court's citation of *Sieracki* and *Hawn* is explainable on this ground, which is consistent with the common understanding that "* * * to constitute unseaworthiness the defect must be in the ship's hull, gear or stowage * * *". *Grillea* v. *United States*, 232 F. 2d 919, 922 (C.A. 2). See, also, *The Southwark*, 191 U.S. 1, 8–9.

In short, this Court held merely that equipment which is used as ship's equipment and thus has been, in effect, incorporated into the vessel's equipment is within the shipowner's warranty of the seaworthiness of that equipment. Each court of appeals which has considered this problem has so interpreted the Court's holdings. *Klimaszewski* v. *Pacific-Atlantic S.S. Co.*, 246 F. 2d 875 (C.A. 3); *Berryhill* v. *Pacific Far East Line*, 238 F. 2d 385 (C.A. 9); *McKnight* v. *N. M. Paterson & Sons*, 286 F. 2d 250, 251 (C.A. 6) affirming on opinion below, 181 F. Supp. 434 (N.D. Ohio), pending on petition for a writ of certiorari, No. 67, this Term; *Kent* v. *Shell Oil Company*, 286 F. 2d 746, 748 (C.A. 5); see *infra*, pp. 28–30.

In this case, by contrast, the "marine leg" is part of a shore structure which cannot go to sea because it is permanently attached to the pier, and is wholly unlike any equipment which is used by vessels in navigation (R. 10). See *infra*, pp. 31–32. *Petterson* and *Rogers* neither raised nor decided the issue presented by this case with respect to equipment which is plainly part of the real estate.[19]

The other decisions of this Court cited by petitioner and Chief Judge Sobeloff below have, we believe, no bearing on the issue. In *The Tungus* v. *Skovgaard*,

[19] The dissenting judge below states that the United States argued that, because the marine leg was "land based," the warranty is inapplicable (R. 107). However, the United States argued below, as it does here, that the warranty does not apply because the equipment is a shore structure and part of the real estate unlike ship's equipment, and because it was not used in substitution for the ship's equipment. See Brief of the United States in the Court of Appeals, pp. 38–40.

358 U.S. 588, the asserted breach of the warranty of seaworthiness (slipperiness due to oil) was of the vessel's deck and tank, not of any shore-based equipment such as was involved in *Petterson* and *Rogers*. Indeed, as the Third Circuit noted in the *Skovgaard* case, the libellant specifically alleged that the death was caused "by the [slippery] condition of the deck and tank and not by the [shore-based] instrumentality he intended to repair." 252 F. 2d 14, 19.[20] Similarly, the breach of warranty of seaworthiness in *Pope & Talbot* v. *Hawn*, 346 U.S. 406, was by a defective condition of the ship itself, an uncovered hatch hole.

(*b*). The only decision of this Court which bears upon the applicability of the owner's warranty of seaworthiness to shore-based equipment which is not identical to and in substitution for ship's equipment is *United Pilots Association* v. *Halecki*, 358 U.S. 613. Although the asserted unseaworthiness in that case was that of the ship itself, and not the special equipment brought aboard her by the shore-based worker to clean the ship's generators, the Court, in holding that the worker was not doing the type of work traditionally done by seamen, referred to and emphasized

[20] The case is inapplicable for the additional reason that neither the Third Circuit nor this Court determined whether there was any breach of a warranty of seaworthiness. The district court had dismissed the libel on the ground that a wrongful death action for unseaworthiness does not lie. The Third Circuit's decision, affirmed by this Court, was that the New Jersey Wrongful Death Act embraces a claim for unseaworthiness. 358 U.S. 588, 590. The Third Circuit remanded the case to the district court for further proceedings, expressly reserving "the question of the unseaworthiness of the vessel * * *." 252 F. 2d 14, 19.

the specialized nature of the equipment which was "* * * brought aboard the vessel for this special purpose" and was not "* * * connected with a ship's seagoing operations." 358 U.S. at 617. Since a man using such special equipment is not performing work traditionally done by seamen, the implication is clear that a defect in such equipment is not ship's equipment within the shipowner's warranty of equipment which is commonly or traditionally found aboard a ship as necessary for a voyage.

2. *The courts of appeals have refused to extend the warranty of seaworthiness to equipment which is not traditionally or commonly a part of a ship's gear.*— Following the implications of this Court's decisions in *Petterson* and *Halecki*, the three other courts of appeal which have been confronted with this problem have denied recovery based upon claims of unseaworthiness of equipment which, like the shoreside crane or "marine leg" here, is not traditionally or commonly carried aboard a vessel as ship's equipment. *Berryhill* v. *Pacific Far East Line*, 238 F. 2d 385 (C.A. 9), certiorari denied, 354 U.S. 938; *Fredericks* v. *American Export Lines*, 227 F. 2d 450 (C.A. 2); *McKnight* v. *N. M. Paterson & Sons*, 286 F. 2d 250 (C.A. 6), pending on a petition for a writ of certiorari, No. 67, this Term.

In *Berryhill*, the Ninth Circuit denied the claim for breach of warranty by a ship repairman who was injured by a defect in a portable grinding wheel which was owned by the repair contractor and brought aboard by him to assist in the performance of the repair work. While the court relied in part

upon the kind of work being done, it also relied upon the nature of the equipment, which was not commonly ship's equipment. The court distinguished its decision in *Petterson* (205 F. 2d 478, affirmed *per curiam* and without opinion, 347 U.S. 396) on the ground, *inter alia,* that the defective block took the place of equipment usually furnished and required by a ship. This Court denied *Berryhill's* petition for certiorari.

Similarly, in *McKnight,* the Sixth Circuit refused to hold the warranty of seaworthiness included a shoreside crane which was, like the "marine leg" here, a part of the pier owned and operated by the stevedore, and was being used to unload newsprint from a vessel. It approved the district court's distinguishing this Court's decisions in *Petterson* and *Rogers* on the ground that the equipment in those cases was merely substituted for gear regularly found as a part of the gear of seagoing vessels (181 F. Supp. at 438–439). And in *Fredericks, supra,* the Second Circuit denied recovery of a claim for breach of warranty of seaworthiness based upon defects in a skid used to unload a vessel.[21] Consistently with the holdings of the courts of appeals, a district court has held that the warranty of seaworthiness does not apply to a shoreside crane or "marine leg" being used to load a barge. *Cockrell* v. *Mechling Barge Lines,* 192 F. Supp. 622 (S.D. Tex.).

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[21] The longshoreman in *Fredericks* was standing upon the dock at the time of his injury. However, the case is not distinguishable on that ground, since the Second Circuit had previously allowed recovery for breach of the warranty of seaworthiness of equipment resulting in injuries to longshoremen occurring ashore. 46 U.S.C. 740; *Strika* v. *Netherlands Ministry of Traffic,* 185 F. 2d 555, certiorari denied, 341 U.S. 904.

Petitioner has cited no case which has held that the warranty of seaworthiness includes shore-based equipment which is not traditionally and commonly part of a ship's gear. We have found only one such case. *Considine* v. *Black Diamond S.S. Corp.*, 163 F. Supp. 107 (D. Mass.). There, the district court (per Aldrich, J.) held that the warranty of seaworthiness included a "chisel truck" which was being used aboard a vessel to aid in handling cargo. Although the court expressed sympathy with the contention that the shipowner did not represent and warrant that such trucks were seaworthy for a voyage, and was able to find "no contrary logic, or social necessity, let alone legislative policy," 163 F. Supp. at 108, it believed the issue "essentially determined" by prior decisions, including *Halecki* v. *United Pilots Association*, 251 F. 2d 708 (C.A. 2), which was subsequently reversed by this Court, 358 U.S. 613.

3. ***There is no justification for extending the warranty of seaworthiness to shore-based equipment which is not the kind of equipment carried by a seagoing vessel.***—The doctrine of recovery for breach of the representation or warranty of the seaworthiness of a vessel and her equipment for a voyage, as applied to seamen and those who attend in their place, arose out of the seaman's status and the conditions of his service.

> He [the seaman] is subject to the rigorous discipline of the sea, and all the conditions of his service constrain him to accept, without critical examination and without protest, working conditions and appliances as commanded by his superior officers. [*Mahnich* v. *Southern S.S. Co.*, 321 U.S. 96, 103.]

And, as noted above, the doctrine was extended to the longshoremen because "[f]or these purposes he is, in short, a seaman because he is doing a seaman's work and incurring a seaman's hazards." *Seas Shipping Co.* v. *Sieracki,* 328 U.S. 85, 99. He was thought to be within the ambit of the same representation of the fitness of the vessel and its gear.

Petitioner here was not, of course, subject to the rigorous discipline of the sea nor was he required to rely on any representation by the shipowner. He was an experienced stevedore foreman who was in charge of the unloading of the HARRY LANE with the "marine leg" and whose duty it was to inspect the "marine leg", for which he had ample opportunity (R. 100, 35). He had in fact examined it on the very day of his injury (R. 100, 35). The "marine leg" was used to unload all vessels at Continental Grain's piers. It was used regularly by petitioner and other expert stevedores of Atlantic and Gulf Stevedoring Associates, which had a contract with Continental Grain Company to unload all vessels at the pier (R. 100, 71–72).[22] No ship's officer or seaman ever used or had a right to inspect the "marine leg," which was operated exclusively by petitioner and other employees of the granary and the stevedore

[22] There is no merit to the suggestion of the dissenting judge below that the injury in this case was somehow due to the fact that there was no unloading equipment aboard the vessel (R. 108). The "marine leg" was special equipment used to unload bulk cargoes from seaworthy vessels which had all necessary ship's equipment, as well as those like the HARRY LANE, which were unseaworthy and had no operable ship's equipment (R. 100, 71–72; see also Pet. Brief, p. 4).

(R. 72–73). The operation of the "marine leg" was work which seamen never do. Similarly, the hazards arising out of the operation of the "leg" were hazards never encountered by seamen, but only by stevedores. Those hazards did not originate with the ship or her equipment, but were due solely to possible defects in the granary's equipment situated on the pier—a part of the real estate. In sum, petitioner's injury was attributable neither to the ship nor to her equipment, but to a kind of shore-based machinery with which he worked every day and which was never used by seamen.

It is anomalous, of course, to speak of the "seaworthiness" of a shoreside crane or "marine leg" which is part of the real estate and never did or could go to sea. It would be equally anomalous to hold the shipowner's representation and warranty of the seaworthiness of a vessel for a voyage to include such machinery forming part of the real estate which never was or could be the equipment of a ship.

We submit that there is no support in policy or practical need for such an extension, which would render liable a shipowner who has provided his seamen and those who stand in their place with a perfectly seaworthy vessel and has fitted her safely with all the necessary or useful equipment carried by a ship. Since the shipowner's liability under such an extension would depend upon chance, and not upon any fault of his, or any defect or shortage in his equipment, there would be little opportunity for a rational apportionment of his loss. Compare *Seas Shipping Co.* v. *Sieracki,* 328 U.S. 85, 96. The

responsibility for defects in such shore equipment should be on those who own and maintain it, not upon the shipowner whose only connection with the machinery is the fact that it is his vessel which is being unloaded at the time it breaks down.

Nor does the existing law leave petitioner without adequate remedies. Under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901, *et seq.*), he had a right to compensation and medical care from his employer without regard to fault—and this right is more generous than that provided by most state workmen's compensation acts. He may also have had an election to seek state workmen's compensation benefits.[23] In addition to such remedies against his employer, petitioner probably had an action in negligence against Continental Grain Co. for the defect in the granary's equipment,[24] as well as the negligence count against the shipowner. Few workers on land or sea have comparable rights for injuries sustained in the course of their employment.[25] There is, therefore, no need to create the anomaly of a ship's warranty of the seaworthiness of shore equipment which does not go to sea.

There is no valid distinction between the "marine leg" and other types of shore equipment which are

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[23] See *e.g.*, *Davis* v. *Department of Labor*, 317 U.S. 249.

[24] Since petitioner chose not to pursue this remedy, the district court did not find it necessary to determine whether the granary was in fact negligent.

[25] Seamen must show negligence or the unseaworthiness of ship's equipment in order to receive anything more than maintenance and cure. Most land workers have only the rights granted them by the state workmen's compensation acts.

not used as a part of a ship's gear. If the warranty of seaworthiness were extended to include the "leg," logic would require its extension to trucks and giant cranes, and other types of shore equipment whose only connection with the sea is their use in unloading vessels. Petitioner and the dissent below would have the warranty of seaworthiness apply to all equipment having "a practical and reasonable relation to the maritime service" (Pet. Brief, pp. 18–19), and all equipment used in loading or unloading vessels (R. 107–108). In this connection, petitioner points out that the locus of the injury to a man working on a dock or on shore does not prevent suit for breach of the warranty of seaworthiness (Pet. Brief, pp. 20–21). *Strika* v. *Netherlands Ministry of Traffic,* 185 F. 2d 555 (C.A. 2), certiorari denied, 341 U.S. 904; see also 46 U.S.C. 740. It would follow that a longshoreman injured on the dock (or the street) by a truck carrying cargo off a vessel would have a claim for the "unseaworthiness" of the truck. This cannot be the law.

As both petitioner and Chief Judge Sobeloff concede, it does not matter that the part of the "marine leg" which broke was partially lowered into the vessel (Pet. Brief, pp. 19–21; R. 108). If the vessel warrants the seaworthiness of the "leg" (although part of the real estate) as a part of her equipment, the warranty must apply to the entire "leg."[28] Petitioner has asserted no adequate reasons for extending the ship's warranty of seaworthiness to the kind of equipment which is not now and never

[28] See *Latus* v. *United States*, 277 F. 2d 264, 266 (C.A. 2), certiorari denied, 364 U.S. 827.

has been the equipment of a ship, and we can find none.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be affirmed.

Respectfully submitted.

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SEPTEMBER 1961.

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

In Admiralty. No. 7818

WILLIAM J. ROPER, LIBELANT

v.

UNITED STATES OF AMERICA, RESPONDENT

v.

CONTINENTAL GRAIN COMPANY, RESPONDENT-IMPLEADED

v.

ATLANTIC & GULF STEVEDORES, INC., RESPONDENT-IMPLEADED

ORDER

On motion of the respondent, the United States of America, for leave to file an amended answer to allegedly conform to the proof, it is ordered that leave is hereby granted to file said amended answer and that the said amended answer be, and the same hereby is filed; the right being granted to libelant and respondents-impleaded to present further evidence, touching upon the issues raised by the amended answer, if said request for further hearing be made within fifteen (15) days from this date.

Entered at Norfolk, Virginia, this 30th day of April, 1958.

S/ WALTER E. HOFFMAN,
United States District Judge.

We ask for this:

S/ JOHN M. HOLLIS,
Assistant U.S. Attorney.

Seen and Objected to:

SIDNEY H. KELSEY,
S/by L. DAVID LINDAUER,
Counsel for William J. Roper.

Seen:

S/ JACK E. GREER,
Counsel for Continental Grain Co.

Seen:

S/ WILLIAM B. ELEY,
Counsel for Atlantic & Gulf Stevedores, Inc.

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CONTINENTAL GRAIN COMPANY, RESPONDENT-IMPLEADED

v.

ATLANTIC & GULF STEVEDORES, INC., RESPONDENT-IMPLEADED

AMENDED ANSWER OF RESPONDENT

Strike paragraph 3 of the Answer and in lieu thereof substitute the following:

3. As to paragraph number 3, respondent admits that it is the owner of the SS HARRY LANE, but denies that she was being sailed as a cargo vessel, and further adds that the SS HARRY LANE was a dead, deactivated vessel of the James River Reserve Fleet, incapable of navigation, employed as a grain depository.

(Sgd.) ----------,
United States Attorney.

[Filed April 30, 1958]

U. S. GOVERNMENT PRINTING OFFICE: 1961